

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**USDC-SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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DATE FILED:**

JAWAUN FRANCIS,

Petitioner,

v.

MICHAEL CAPRA,

Respondent.

No. 18-CV-628 (RA)

ORDER ADOPTING  
REPORT & RECOMMENDATION

RONNIE ABRAMS, United States District Judge:

Petitioner Jawaun Francis, proceeding *pro se*, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his judgment of conviction for Murder in the Second Degree and Criminal Possession of a Weapon in the Second Degree following a jury trial in New York State Supreme Court, Bronx County. Francis argues that: 1) the trial court erred by not allowing him to present a third-party culpability defense; 2) the guilty verdicts were against the weight of the evidence; 3) several erroneous evidentiary rulings deprived him of a fair trial; and 4) his sentence of 23 years' imprisonment was excessive. Now before the Court is Magistrate Judge Lehrburger's Report and Recommendation (the "Report"), which recommends dismissal of all claims as either procedurally barred, non-cognizable for habeas review, or lacking merit. Dkt. 16. Neither party has filed objections to the Report.

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made" by a magistrate judge in a report and recommendation. 28 U.S.C. § 636(b)(1). In the absence of specific, written objections, the Court may accept such a report so long as the factual and legal bases supporting the findings are not clearly erroneous. *See, e.g.,*

*Carmichael v. Chappius*, 340 F. Supp. 3d 340, 345 (S.D.N.Y. 2018), *aff'd*, 811 F. App'x 41 (2d Cir. 2020). A decision is clearly erroneous “only if the reviewing court is left with the definite and firm conviction that a mistake has been committed.” *Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213, 228 (2d Cir. 2021) (internal quotation marks omitted). Moreover, “a party generally waives judicial review of an issue when he or she fails to make timely objection to a magistrate judge's report, as long as all parties receive clear notice of the consequences of their failure to object.” *DeLeon v. Strack*, 234 F.3d 84, 86 (2d Cir. 2000).

In this case, Judge Lehrburger provided the parties with fourteen days to file written objections to the Report, and warned that “[f]ailure to file timely objections will result in a waiver of objections and will preclude appellate review.” Dkt. 16 at 30. Neither party submitted any objections. The Court has reviewed the Report for clear error, and found none. The petition for a writ of habeas corpus is accordingly dismissed. Because the petition makes no substantial showing of a denial of a constitutional right, the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c)(2). The Clerk of Court is respectfully directed to mail a copy of this order to Petitioner and to close this case.

SO ORDERED.

Dated: April 7, 2021  
New York, New York

A handwritten signature in blue ink, appearing to read 'Ronnie Abrams', with a long horizontal flourish extending to the right.

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Ronnie Abrams  
United States District Judge